

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

LUIS G. BURGOS-RODRIGUEZ,

Petitioner,

v.

PUEBLO DE PUERTO RICO,

Respondent.

Civil No. 14-1528 (JAF)

OPINION AND ORDER

Petitioner Luis G. Burgos-Rodríguez (“Burgos-Rodríguez”) comes before the court with a petition under 28 U.S.C. § 2254 to set aside the criminal conviction and judgment entered against him by the Courts of the Commonwealth of Puerto Rico. (Docket No. 2.) We deny his petition because it is time-barred.

I.

Background

On June 16, 2007, the Commonwealth accused Burgos-Rodríguez of committing criminal acts. After his arraignment, the Commonwealth Court dismissed the charges due to a violation of Burgos-Rodríguez’s right to a speedy trial. Then, on November 27, 2007, the prosecution filed new accusations without the need for another preliminary hearing, based on a recent Commonwealth Supreme Court case. (Docket No. 22-4 at 4.) Burgos-Rodríguez challenged the arrest and search, and he filed an interlocutory appeal. On January 31, 2008, the Commonwealth Court of Appeals held that the trial court “correctly concluded that the State fulfilled the burden of proof required to show that the arrest and incidental search were lawful.” (Docket No. 22-6 at 5.) Burgos-Rodríguez was then tried by a Commonwealth Court jury for sexual assault, robbery, a Puerto Rico

1 Weapons Law violation, and an attempted kidnapping. (Docket No. 22-1 at 5.) On
2 September 30, 2008, the jury found Burgos-Rodríguez guilty of the sexual assault charge
3 and the weapons law charge. (Docket No. 19 at 2; Exhibit 1 at 4; Docket No. 22-1 at 28-
4 29; Docket No. 22-4 at 4.)

5 Before sentencing, on October 27, 2008, a Commonwealth Supreme Court case set
6 forth “a new procedural rule that established that once an accusation is dismissed because
7 the right to a speedy trial is violated, if the Prosecution decides to start a new procedure,
8 it must begin with a finding of probable cause for arrest all over again.” (Docket No. 22-
9 4 at 14.) Using this case, Burgos-Rodríguez unsuccessfully argued that the
10 Commonwealth Court must “arrest the judgment” of guilt. (Docket No. 22-4 at 14.) The
11 prosecution filed a motion to include aggravating circumstances in his sentencing.
12 (Docket No. 22-4 at 4.) On December 18, 2008, the trial court sentenced Burgos-
13 Rodríguez to a forty-five (45) year term of imprisonment. (Docket No. 19 at 2; Exhibit 1
14 at 4; Docket No. 22-1 at 28-29.)

15 Burgos-Rodríguez appealed his sentence to the Commonwealth Appellate Court.
16 He alleged that the trial court, via the jury, erred by finding that he was guilty “in light of
17 exclusionary DNA evidence,” by denying the motion for peremptory acquittal, and by
18 reaching an “illogical verdict,” by “entering judgment with aggravating circumstances,”
19 and by “denying a motion in arrest of judgment.” (Docket No. 19 at 2; Docket No. 8 at
20 13-14; Docket No. 22-2 at 1.) On May 24, 2010, the Commonwealth Appeals Court
21 vacated the portion of his sentence related to the weapons law violation and remanded
22 that portion to the trial court for a hearing regarding aggravating circumstances. The
23 Appeals Court wrote that “[I]f the Prosecution is seeking the imposition of a penalty with
24 aggravating circumstances, it will be necessary for the court of instance to hold a hearing

1 to those effects and for a jury to determine if the aggravating circumstances were proved
2 beyond a reasonable doubt.” (Docket No. 22-4 at 22.) Burgos-Rodríguez’s new sentence
3 became final on July 29, 2010. (Docket No. 19 at 2.)¹ He filed a writ of certiorari in the
4 Commonwealth Supreme Court on August 5, 2010, but his writ was time-barred and,
5 therefore, denied. (Docket No. 19 at 2; Exhibit No. 2 at 3; Docket No. 22-3 at 3.).

6 On February 17, 2011, Burgos-Rodríguez filed a habeas corpus petition in the
7 Commonwealth Court. The Court held a hearing, granted the petition, and ordered his
8 release. (Docket No. 19 at 3.) The Puerto Rico government appealed. (Docket No. 19 at
9 3, Ex. 3.) On March 30, 2012, the Commonwealth Court of Appeals ruled that,

10 [i]t is our conclusion that the CFI [Commonwealth Trial
11 Court] erred when it made the rule laid down in *Pueblo v.*
12 *Camacho Delgado*, *supra*, retroactive to the appellee’s case.
13 Likewise, it erred when it vacated the criminal sentences
14 imposed on the appellee after a fair and impartial trial was
15 held against him...,
16

17 and reinstated his original sentence. (Docket No. 22-4 at 15-16.) Burgos-Rodríguez then
18 filed a petition for certiorari in the Commonwealth Supreme Court, which was denied on
19 October 2, 2012. (Docket No. 22-5 at 2.) On November 9, 2012, the Commonwealth
20 Supreme Court denied Burgos-Rodríguez’s first motion for reconsideration. (Docket
21 No. 22-5 at 3.) On December 14, 2012, the Commonwealth Supreme Court denied his
22 second motion for reconsideration. (Docket No. 22-5 at 4.)

23 On July 2, 2014, Burgos-Rodríguez filed the instant petition under 28 U.S.C.
24 § 2254 to set aside the criminal conviction and judgment the Courts of the
25 Commonwealth of Puerto Rico entered against him. (Docket Nos. 2, 8.) We ordered the

¹ The record does not include a copy of this judgment. Therefore, we do not know for certain if a hearing was held, or if the sentence was merely lowered to exclude aggravating factors. What we do know is that the Commonwealth Court of Appeals later stated that on June 29, 2010, the appellate court denied a motion for reconsideration, and that Burgos-Rodriguez’s sentences “became final and enforceable since July 29, 2010.” *People v. Burgos Rodriguez*, 2012 WL 1667583 at 8 (Circuit Court of Appeals).

1 Puerto Rico Department of Justice (“PRDOJ”) to file a responsive pleading and/or a
2 motion to dismiss. (Docket No. 12.) On September 19, 2014, the PRDOJ filed a motion
3 to dismiss the petition. (Docket No. 19.) On October 29, 2014, Burgos-Rodríguez filed a
4 response in opposition to that motion, in which he repeated his prior arguments. (Docket
5 No. 24-2).

6 II.

7 Analysis

8 Federal courts may consider a claim under § 2254 on the ground that the
9 prisoner’s confinement violates the Constitution, laws, or treaties of the United States.
10 See 28 U.S.C. § 2254(a). We, however, lack jurisdiction in this case because it is time-
11 barred.

12 Section 2254 petitions must be filed within one year from the latest of:

13 (A) the date on which the judgment became final by the
14 conclusion of direct review or the expiration of the time for
15 seeking such review; (B) the date on which the impediment to
16 filing an application created by State action in violation of the
17 Constitution or laws of the United States is removed, if the
18 applicant was prevented from filing by such State action;
19 (C) the date on which the constitutional right asserted was
20 initially recognized by the Supreme Court, if the right has
21 been newly recognized by the Supreme Court and made
22 retroactively applicable to cases on collateral review; or
23 (D) the date on which the factual predicate of the claim or
24 claims presented could have been discovered through the
25 exercise of due diligence.

26
27 28 U.S.C. § 2244(d)(1). This one-year limitation is tolled while a properly-filed
28 application for state post-conviction or other collateral review is pending. 28 U.S.C.
29 § 2244(d)(2). However, the statutory tolling does not include pending federal habeas
30 petitions. *Duncan v. Walker*, 533 U.S. 167, 172 (2001).

Certificate of Appealability

In accordance with Rule 11 of the Rules Governing Section 2254 Cases, whenever issuing a denial of 2254 relief, we must concurrently determine whether to issue a certificate of appealability ("COA"). We grant a COA only upon "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To make this showing,

³ Burgos-Rodriguez's claim would be time-barred even if it were tolled until the decision on his second motion for reconsideration. Therefore, we need not examine whether his tolling ended after the initial Commonwealth Supreme Court decision, the first motion for reconsideration, or the second motion for reconsideration, because the result would remain the same.

1 “[t]he petitioner must demonstrate that reasonable jurists would find the district court's
2 assessment of the constitutional claims debatable or wrong.” *Miller-El v. Cockrell*, 537
3 U.S. 322, 338 (2003) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). While
4 Burgos-Rodríguez has not yet requested a COA, we see no way in which a reasonable
5 jurist could find our assessment of his constitutional claims debatable or wrong. Burgos-
6 Rodríguez may request a COA directly from the First Circuit, pursuant to Rule of
7 Appellate Procedure 22.

8 **IV.**

9 **Conclusion**

10 For the foregoing reasons, we hereby **DENY** Burgos-Rodríguez’s § 2254 petition
11 (Docket No. 2). Pursuant to Rule 4 of the Rules Governing § 2254 Cases, summary
12 dismissal is in order because it plainly appears from the record that Burgos-Rodríguez is
13 not entitled to § 2254 relief from this court. According to Rule 8 of the Rules Governing
14 § 2254 Cases, an evidentiary hearing is only held if the petition is not dismissed.

15 **IT IS SO ORDERED.**

16 San Juan, Puerto Rico, this 8th day of December, 2014.

17 S/José Antonio Fusté
18 JOSE ANTONIO FUSTE
19 U. S. DISTRICT JUDGE